

TITLE 75

CHAPTER 6

**PUBLIC WATER SUPPLIES,
DISTRIBUTION, AND TREATMENT**

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Part 1

Public Water Supply

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Board" means the board of environmental review provided for in 2-15-3502.
- (2) "Certified wellhead protection area" means an area certified by the department that protects the surface and subsurface area surrounding a source of ground water for a public water supply system through which contaminants may move toward and reach the source of supply.
- (3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.
- (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.
- (5) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.
- (6) "Department" means the department of environmental quality provided for in 2-15-3501.
- (7) "Drainage" means rainfall, surface, and subsoil water.
- (8) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.
- (9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.
- (10) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.
- (11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.
- (12) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
- (13) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.
- (14) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste,

color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(15) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(16) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(17) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(18) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(19) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(20) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979; amd. Sec. 2, Ch. 312, L. 1989; amd. Sec. 1, Ch. 645, L. 1991; amd. Sec. 188, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 1995; amd. Secs. 525, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 315, L. 2001.

75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979; amd. Sec. 2, Ch. 197, L. 1989; amd. Sec. 2, Ch. 645, L. 1991; amd. Sec. 13, Ch. 471, L. 1995; amd. Sec. 4, Ch. 488, L. 1995; amd. Sec. 8, Ch. 73, L. 1997; amd. Sec. 2, Ch. 511, L. 1999.

75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

History: En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 645, L. 1991.

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906.

75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department or board unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes.

History: En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979; amd. Sec. 9, Ch. 73, L. 1997.

75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979.

75-6-108. Board to prescribe fees -- opportunity for appeal. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a

public water supply system is no more than \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water supply system, although the minimum fee for any system is \$100, except that the fee for a transient noncommunity water system is \$50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a).

History: En. Sec. 4, Ch. 645, L. 1991.

75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (a) An action initiated under this part may include an administrative penalty not to exceed:

(i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and
(ii) \$500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.

History: En. Sec. 6, Ch. 645, L. 1991; amd. Sec. 2, Ch. 302, L. 1995; amd. Sec. 64, Ch. 509, L. 1995; amd. Sec. 10, Ch. 73, L. 1997; amd. Sec. 6, Ch. 195, L. 1999.

75-6-110. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this part, a rule adopted under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;
(b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;
(c) bringing a judicial action as authorized by 75-6-111; or
(d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this part do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating an administrative action authorized by this part.

History: En. Sec. 1, Ch. 302, L. 1995.

75-6-111. Appeal from rule or standard -- injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in 75-6-109. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in 75-6-114.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979; amd. Sec. 1, Ch. 412, L. 1985; amd. Sec. 5, Ch. 645, L. 1991.

75-6-112. Prohibited acts. A person may not:

- (1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;
- (2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;
- (3) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.
- (4) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;
- (5) violate any provision of this part or a rule adopted under this part; or
- (6) violate any condition or requirement of an approval issued pursuant to this part.

History: En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979; amd. Sec. 1, Ch. 230, L. 1989; amd. Sec. 5, Ch. 488, L. 1995; amd. Sec. 15, Ch. 497, L. 1995; amd. Sec. 7, Ch. 195, L. 1999; amd. Sec. 2, Ch. 315, L. 2001.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than \$500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).

75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement or judgment, as appropriate:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.

History: En. Sec. 7, Ch. 645, L. 1991; amd. Sec. 3, Ch. 302, L. 1995; amd. Sec. 65, Ch. 509, L. 1995.

75-6-115. Public drinking water special revenue fund. (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102.

(2) There must be credited to the public drinking water special revenue fund the revenue from fees assessed, collected, and allocated pursuant to 75-6-108. Funds from the public drinking water special revenue fund may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

History: En. Sec. 8, Ch. 645, L. 1991; amd. Sec. 66, Ch. 509, L. 1995.

75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995.

75-6-117 through 75-6-119 reserved.

75-6-120. Montana wellhead protection program -- voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7, enables the department to

administer a wellhead protection program that involves certification of local wellhead protection areas and review of wellhead protection area ordinances. In administering this program, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a wellhead protection program for the system.

(3) The department may certify a wellhead protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the wellhead protection area meets criteria and thresholds for certification established by the Montana wellhead protection program.

(4) (a) The governing body of the county in which a wellhead protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the wellhead protection area or areas.

(b) Prior to adopting a wellhead protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and verification that the ordinance is consistent with the requirements of this chapter.

(c) A wellhead protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified wellhead protection area or areas within the county.

(b) For a wellhead protection area that is located in two or more counties, the proposed wellhead protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A wellhead protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8.

History: En. Sec. 6, Ch. 488, L. 1995.

75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The board may adopt rules regarding the delegation of review authority to divisions of local government.

History: En. Sec. 1, Ch. 312, L. 1989.

75-6-122 through 75-6-125 reserved.

75-6-126. Ownership of public water supply system or public sewage system -- change in status. (1) A person may not own a public water supply system or a public sewage system unless that person is:

(a) an individual;

- (b) a limited partnership;
- (c) a limited liability company;
- (d) a corporation, whether organized for profit or not;
- (e) a city, town, local government entity, or other political subdivision of the state; or
- (f) a federal agency.

(2) The owner of a public water supply system or a public sewage system shall, within 90 days after being requested to do so by the department or within 90 days after a transfer in ownership:

- (a) submit information on a form provided by the department that details the ownership status of the public water supply system or public sewage system; and
- (b) provide other necessary information for the department's records.

History: En. Sec. 3, Ch. 315, L. 2001.

Part 2

Drinking Water State Revolving Fund Act

75-6-201. Short title. This part may be cited as the "Drinking Water State Revolving Fund Act".

History: En. Sec. 1, Ch. 553, L. 1995; amd. Sec. 13, Ch. 538, L. 1997.

75-6-202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

- (a) costs of servicing loans and issuing debt;
- (b) program startup costs;
- (c) financial, management, and legal consulting fees; and
- (d) reimbursement costs for support services from other state agencies.

(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

- (a) engineering, financing, and other fees;
- (b) interest during construction;
- (c) construction; and
- (d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.

(6) "Federal act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as that act read on May 5, 1997.

(7) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(10) "Municipality" means a state agency, city, town, or other public body, including an authority as defined in 75-6-304, created pursuant to state law or an Indian tribe.

(11) "Noncommunity water system" means a public water system that is not a community water system.

(12) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(14) "Program" means the drinking water state revolving fund program established by this part.

(15) "Project" means improvements or activities that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

(16) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.

(17) "Revolving fund" means the drinking water state revolving fund established by 75-6-211.

History: En. Sec. 2, Ch. 553, L. 1995; amd. Sec. 14, Ch. 538, L. 1997; amd. Sec. 23, Ch. 498, L. 1999.

75-6-203. Drinking water state revolving fund program. There is a program under which the state may provide financial assistance to community water systems and nonprofit noncommunity water systems. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 553, L. 1995; amd. Sec. 15, Ch. 538, L. 1997.

75-6-204. Authorization of agreement -- content. (1) The department may enter into a capitalization grant agreement or other agreement with the environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into an agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-6-211;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-6-211 on or before the date on which each federal grant payment is made to the state;

(c) deposit in the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)) a state match equal dollar-for-dollar to the capitalization grant deposited in the account;

(d) provide financial and technical assistance to a public water system in accordance with this part in an amount equal to 120% of the amount of each grant payment within a period not to exceed 1 year after receipt of a grant;

(e) expend all funds in the revolving fund in an expeditious and timely manner;

(f) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(g) expend each grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenue of the state;

(h) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(i) make biennial reports and provide annual audits to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part and the federal act.

(3) As a condition of making a loan or providing other financial assistance from the revolving fund, the department shall require that the public water system maintain project accounts in accordance with generally accepted government accounting standards.

History: En. Sec. 4, Ch. 553, L. 1995; amd. Sec. 16, Ch. 538, L. 1997.

75-6-205. Rulemaking authority. The department and the department of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and technical assistance;

(2) governing the application of the criteria for awarding loans and technical assistance;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans to be made if considered appropriate and necessary for the successful administration of the program;

(5) establishing affordability criteria to be used in awarding subsidies to disadvantaged communities;

(6) regarding other matters that may be required to ensure compliance of the program with the provisions of the federal act and rules promulgated under the federal act, unless these matters are specifically governed by this part; and

(7) to maintain the financial integrity of the program.

History: En. Sec. 5, Ch. 553, L. 1995; amd. Sec. 268, Ch. 42, L. 1997; amd. Sec. 17, Ch. 538, L. 1997.

75-6-206 through 75-6-210 reserved.

75-6-211. Revolving fund. (1) There is established in the state treasury a separate account designated as the drinking water state revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account. A nonproject account for the program is established in the state treasury as a separate account that is outside the revolving fund.

(2) There must be credited to:

(a) the federal allocation account:

(i) all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity water systems; and

(ii) all amounts transferred to the fund from the water pollution control state revolving fund under 75-5-1106;

(b) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to 75-6-225, less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii);

(ii) money appropriated by the legislature; and

(iii) other available qualifying funds;

(c) the administration account, an amount not to exceed 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs and that may include a combination of:

(i) federal funds; and

(ii) the proceeds of bonds of the state issued pursuant to 75-6-225 as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds;

(e) the debt service account, the interest portion of loan repayments; and

(f) the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)), up to 10% of the capitalization grant and the state's match as described in 75-6-204.

(3) Each loan made under this part must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's water pollution control revolving fund program.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal act, the governor may reserve or transfer to the state's water pollution control revolving fund up to 33% of the state's drinking water revolving fund program capitalization grant. The transfer of funds must be included in the intended use plan in 75-6-231.

History: En. Sec. 6, Ch. 553, L. 1995; amd. Sec. 269, Ch. 42, L. 1997; amd. Sec. 18, Ch. 538, L. 1997; amd. Sec. 5, Ch. 421, L. 1999.

75-6-212. Use of revolving fund. (1) Money in the revolving fund may be used to:

(a) make loans to community water systems and nonprofit noncommunity water systems as provided in this part;

(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;

(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;

(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;

(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:

(i) public water system supervision programs;

(ii) administering or providing technical assistance through source water protection programs;

(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and

(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);

(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business.

(2) Except as provided in subsection (3), money in the fund may not be used for:

(a) expenditures related to monitoring, operation, and maintenance;

(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;

(c) providing assistance to a public water system that:

(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or

(d) any other activity prohibited from funding under the federal act.

(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:

(i) the use of the assistance will ensure compliance; and

(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.

(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system.

History: En. Sec. 7, Ch. 553, L. 1995; amd. Sec. 19, Ch. 538, L. 1997.

75-6-213. Repealed. Sec. 27, Ch. 538, L. 1997.

History: En. Sec. 8, Ch. 553, L. 1995.

75-6-214. Use of funds -- statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of providing financial assistance to public water systems.

History: En. Sec. 9, Ch. 553, L. 1995; amd. Sec. 54, Ch. 422, L. 1997.

75-6-215. Repealed. Sec. 27, Ch. 538, L. 1997.

History: En. Sec. 10, Ch. 553, L. 1995.

75-6-216 through 75-6-220 reserved.

75-6-221. General loan and assistance program. (1) The program may, subject to the requirements in 75-6-222 through 75-6-224, make loans to community water systems and nonprofit noncommunity water systems that:

(a) will facilitate compliance with national primary drinking water regulations pursuant to the federal act; or

(b) will further the health protection objectives of the federal act, including but not limited to projects that involve:

(i) upgrading and replacing infrastructure;

(ii) addressing exceedances of the federal act or preventing future violations;

(iii) consolidating water supplies;

(iv) the acquisition of land, at fair market value, that is integral to the project;

(v) planning and designing of a project; or

(vi) other activities allowed under the federal act.

(2) In addition to loans authorized under subsection (1), the program may make loans to public water systems for one or more of the following purposes:

(a) to a community water system or nonprofit noncommunity water system to acquire land or a conservation easement from a willing party if the land is necessary to ensure

compliance with the national primary drinking water regulations or to protect the source of water from contamination;

(b) to a community water system to implement local, voluntary source water protection measures in order to protect source water in areas delineated under a source water assessment program in order to facilitate compliance with the national primary drinking water regulations or otherwise significantly further the health protection objectives of the federal act;

(c) to a community water system to provide funding for the development and implementation of a source water quality assessment, contingency plans, and demonstration projects for partners within a delineated source water area.

(3) The department may:

(a) provide financial and technical assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with the federal act;

(b) make expenditures from the capitalization grant to delineate and assess source water protection areas, provided that funds set aside for such expenditures must be obligated within 4 fiscal years; and

(c) make expenditures from the fund for the establishment and implementation of wellhead protection programs.

(4) The program may provide financial assistance to a public water system according to priorities established by the department in the department's intended use plan adopted pursuant to 75-6-231. Prior to making a loan to a public water system, the department of natural resources and conservation shall determine that the system has the ability to repay the loan according to its terms and conditions and may require a dedicated source of repayment and impose additional requirements.

(5) The total amount of assistance provided and expenditures made by the program under subsections (2) and (3) may not exceed 15% of the amount of the capitalization grant received by the department for that year and may not exceed 10% of that amount for any one of the activities listed under subsection (2) or (3).

History: En. Sec. 11, Ch. 553, L. 1995; amd. Sec. 23, Ch. 538, L. 1997.

75-6-222. Evaluation of projects and loan applications. The department and the department of natural resources and conservation shall evaluate projects and loan applications. In evaluating projects and applications, the following factors must be considered:

(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;

(2) the financial capacity of the applicant;

(3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;

(4) the total financing of the project to ensure completion;

(5) the viability of the public water system;

(6) the ability of the public water system to pay the costs of the project without the requested financial assistance;

(7) the total amount of loan funds available for financial assistance in the revolving fund;

(8) the total amount requested by other applications that have been received or that are likely to be received;

(9) the ranking of the project on the priority list in the intended use plan; and

(10) any other criteria that the department determines to be appropriate, considering the purposes of the program and the federal act.

History: En. Sec. 12, Ch. 553, L. 1995; amd. Sec. 24, Ch. 538, L. 1997.

75-6-223. Applications for loans. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan must include:

- (a) a reasonably detailed description of the project;
- (b) a reasonably detailed estimate of the cost of the project;
- (c) a timetable for the construction of the project and for payment of the cost of the project;
- (d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;
- (e) the source or sources of revenue proposed to be used to repay the loan;
- (f) a current financial statement of the system showing assets, liabilities, revenue, and expenses;
- (g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;
- (h) if the applicant is a private person, a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and
- (i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:
 - (i) engineering reports;
 - (ii) economic feasibility studies; and
 - (iii) legal opinions.

- (2) Each application for a loan subsidy must include:
 - (a) a reasonably detailed description of the project;
 - (b) a reasonably detailed estimate of the cost of the project;
 - (c) a timetable for the construction of the project and for payment of the cost of the project;
 - (d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;
 - (e) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;
 - (f) an explanation, including supporting information, as to why a loan subsidy is requested;
 - (g) evidence that the applicant qualifies as a disadvantaged community; and
 - (h) any other information that the department or the department of natural resources and conservation may require.

History: En. Sec. 13, Ch. 553, L. 1995; amd. Sec. 25, Ch. 538, L. 1997.

75-6-224. Loan conditions. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;

(c) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(d) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(e) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(f) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(g) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public water systems established by the department;

(i) providing for proper construction inspection and project management; and

(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date. If the applicant is a disadvantaged community that has qualified and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date, provided that the period of the loan does not exceed the expected design life of the project.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable, may be calculated according to a formula, and may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the amount of the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and

conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

History: En. Sec. 14, Ch. 553, L. 1995; amd. Sec. 26, Ch. 538, L. 1997; amd. Sec. 6, Ch. 421, L. 1999.

75-6-225. Authorization of bonds -- allocation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are allocated to the state allocation account or the administration account of the revolving fund, as provided in 75-6-211. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 15, Ch. 553, L. 1995; amd. Sec. 7, Ch. 421, L. 1999.

75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate.

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.

History: En. Sec. 20, Ch. 538, L. 1997.

75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed \$20 million and authorizes the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the drinking water program.

History: En. Sec. 16, Ch. 553, L. 1995; amd. Sec. 4, Ch. 421, L. 1999.

75-6-228 through 75-6-230 reserved.

75-6-231. Intended use plan -- advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act (42 U.S.C. 300j-12(b)).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review,

comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

- (i) one member from the Montana league of cities and towns;
- (ii) one member from the Montana association of counties;
- (iii) one member from the department of natural resources and conservation;
- (iv) one member from the department of environmental quality; and
- (v) two members from the joint legislative subcommittee on natural resources. One member must be from the house of representatives and one from the senate, and they may not represent the same political party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g).

History: En. Sec. 21, Ch. 538, L. 1997.

75-6-232. Insurance and guarantee program. (1) The revolving fund may be used to purchase insurance for or guarantee the timely payment of principal and interest on a debt obligation issued by a municipality if the department of natural resources and conservation determines that the guarantee or insurance would improve the credit market access of the municipality or reduce the interest rate on the municipal obligation.

(2) The department of natural resources and conservation shall adopt rules setting forth the conditions under which the program will guarantee or insure municipal obligations, including the amount of fees to be charged for the guarantee or the purchase of insurance and the amount of reserves, if any, to be established in the fund to cover any guarantee. The program may not be used to guarantee a municipal obligation for a project or municipality not meeting the requirements of 75-6-224, except to the extent that they are inconsistent with the guarantee.

History: En. Sec. 22, Ch. 538, L. 1997.

75-6-233 through 75-6-235 reserved.

75-6-236. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under 75-6-222, and that are considered to be in compliance with 75-6-224, the department of natural resources and conservation may advance money to a public water system in anticipation of the receipt of federal funds by the public water system on the following conditions:

(1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;

(2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the public water system to pay all of the construction costs;

(3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and

(4) the advance of the money will be in the form of a note that is issued pursuant to 7-7-109 in anticipation of a federal grant for which the public water system promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.

History: En. Sec. 2, Ch. 9, L. 2001.

Part 3

Regional Water and Wastewater Authority Act

75-6-301. Short title. This part may be cited as the "Regional Water and Wastewater Authority Act".

History: En. Sec. 1, Ch. 498, L. 1999.

75-6-302. Purpose. (1) It is the purpose of this part to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of this part to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority.

(2) In addition to the purposes for which it may have originally been created, any authority created pursuant to this part may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of related services, including but not limited to the following:

- (a) administration;
- (b) operation and maintenance; and
- (c) billing and collection.

History: En. Sec. 2, Ch. 498, L. 1999.

75-6-303. Liberal construction. The provisions of this part are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of this part.

History: En. Sec. 20, Ch. 498, L. 1999.

75-6-304. Definitions. For the purposes of this part, the following definitions apply:

(1) "Authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part.

(2) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.

History: En. Sec. 3, Ch. 498, L. 1999.

75-6-305. Joint exercise of powers by certain public agencies -- agreements among agencies -- filing of agreement -- prohibition against competition -- retirement of bonds. (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.

(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.

(3) An agreement must specify the following:

- (a) its duration;
- (b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;
- (c) its purpose or purposes;
- (d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;
- (e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;
- (f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and
- (g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.

History: En. Sec. 4, Ch. 498, L. 1999.

75-6-306. Furnishing of funds, personnel, or services by certain public agencies -- agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater -- terms and conditions. A public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned water distribution company may enter into contracts with an authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to this part, for the transportation and treatment of wastewater by either party. The authority may enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of a water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

History: En. Sec. 5, Ch. 498, L. 1999.

75-6-307 through 75-6-309 reserved.

75-6-310. Declaration of authority organization -- when public body, corporate and politic. Upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number, regional wastewater authority number, or regional water and wastewater authority number, as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

History: En. Sec. 6, Ch. 498, L. 1999.

75-6-311. Governing body -- appointments -- terms of members -- voting rights. (1) The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in 75-6-305 and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.

(2) The manner of selection of the governing body and terms of office must be set forth in the agreement provided for in 75-6-305 and amendments to the agreement. The governing

body of the authority shall elect one of its members as president, one as treasurer, and one as secretary.

(3) Each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.

History: En. Sec. 7, Ch. 498, L. 1999.

75-6-312. Meetings of governing body -- annual audit. The governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.

History: En. Sec. 8, Ch. 498, L. 1999.

75-6-313. Powers of governing body. (1) For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section.

(2) The governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation, from this state or any other state or any political subdivision or municipality of this or any other state, or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The governing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant.

(3) The governing body may sue and be sued.

(4) The governing body may enter into franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state or the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agencies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be applicable to any member public agency.

(5) The governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in this part and may refund the indebtedness by the issuance of refunding obligations.

(6) The governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or

outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30.

(7) The governing body may acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization.

(8) The governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish regulations relating to authority improvements.

(9) The governing body may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must be paid out of the funds of the authority.

(10) The governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing body and of the authority.

(11) The governing body has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this part.

**History: En. Sec. 9, Ch. 498, L. 1999.
75-6-314 through 75-6-319 reserved.**

75-6-320. Revenue bonds. For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purposes, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue bonds are a lien on the revenue produced from the operation of the authority's system, but may not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this part must be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority. The bonds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiable and payable solely from the revenue derived from the operation of

the system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created by this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form, may carry registration privileges, may be executed in the manner, may be payable at a place or places, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date, may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the bonds may contain covenants and restrictions upon the issuance of additional bonds that are considered necessary or advisable for the assurance of the payment of the bonds authorized by the resolutions.

History: En. Sec. 10, Ch. 498, L. 1999.

75-6-321. Items included in cost of properties. The cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of this part must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in this part, the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

History: En. Sec. 11, Ch. 498, L. 1999.

75-6-322. Trust indenture. In the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank that has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member public agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, operation, repair, maintenance, and insurance of the bonds and the custody, safeguarding, and application of all money. The resolution may also provide that all or any part of the construction work must be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to the purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

History: En. Sec. 12, Ch. 498, L. 1999.

75-6-323. Sinking fund for revenue bonds. At or before the time of the issuance of any bonds under this part, the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums that are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for the retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.

History: En. Sec. 13, Ch. 498, L. 1999.

75-6-324. Collection of revenue and enforcement of covenants -- default -- suit to compel performance -- appointment and powers of receiver. The governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of the authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in 75-6-323 or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agents, or employees fail or refuse to comply with the provisions of this part or default in any covenant or agreement made with respect to the issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the

district court in any of the counties in which the authority operates or in any other court of competent jurisdiction to enforce and compel performance of all duties required by this part or undertaken by the authority in connection with the issuance of the bonds. Upon application by any holder or holders of the bonds or the trustee of the trust indenture, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

History: En. Sec. 14, Ch. 498, L. 1999.

75-6-325. Statutory mortgage lien. There is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to be issued pursuant to this part, and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

History: En. Sec. 15, Ch. 498, L. 1999.

75-6-326. Rates and charges. The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges, for the use of all services rendered by the authority. The rates, fees, and charges must be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system, provide an adequate depreciation fund, provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due, and create reasonable reserves for the enumerated purposes. The rates, fees, or charges must be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.

History: En. Sec. 16, Ch. 498, L. 1999.

75-6-327. Refunding revenue bonds. If the authority has issued bonds under the provisions of this part, it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of this part relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.

History: En. Sec. 17, Ch. 498, L. 1999.

75-6-328. Exemption from taxation. Bonds issued pursuant to this part and the interest on the bonds, together with all properties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the money, revenue, and other income of the authority derived from the water supply, wastewater transportation, or treatment system are exempt from all taxation by the state or any county, municipality, political subdivision, or agency of the state, county, or municipality.

History: En. Sec. 18, Ch. 498, L. 1999.

75-6-329. Bonds as legal investment. Bonds issued under the provisions of this part are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

History: En. Sec. 19, Ch. 498, L. 1999.